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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Federal-State Joint Board on)
Universal Service) CC Docket No. 96-45
)
Smithville Telephone Company, Inc.)
Petition for Waiver of Section 54.301 Local)
Switching Support Data Submission Reporting)
Date for an Average Schedule Company)

ORDER

Adopted: May 17, 2004

Released: May 18, 2004

By the Chief, Telecommunications Access Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request from Smithville Telephone Company, Inc. (Smithville), an incumbent local exchange carrier (LEC) that has been designated as an eligible telecommunications carrier (ETC), for a waiver of the October 1, 2003 data filing deadline set forth in section 54.301(b) of the Commission's rules for local switching support (LSS).¹ Granting Smithville's waiver request will allow it to receive LSS for the 2004 calendar year.

II. BACKGROUND

2. Incumbent LECs that have been designated as ETCs and serve 50,000 or fewer access lines within a study area are eligible to receive LSS.² Before an incumbent LEC can begin receiving LSS, however, certain data must be filed with the Universal Service Administrative Company (USAC). First, the relevant state commission must file a certification stating that all high-cost support, which includes LSS, received by the incumbent LEC will be used "only for the provision, maintenance, and upgrading of facilities and services for which support is intended."³ Second, the incumbent LEC must file certain data

¹ Smithville Telephone Company, Inc., Petition for Waiver of FCC Rule Section 54.301 Local Switching Support Data Submission Reporting Date for an Average Schedule Company, CC Docket No. 96-45, filed Feb. 26, 2004 (Smithville Petition). Smithville also requests a waiver of section 54.301(f) of the Commission's rules. See Smithville Petition at 1. We find, however, that it is unnecessary to address this waiver request because the October 1 filing deadline for receiving LSS is only found in section 54.301(b) of the Commission's rules. See 47 C.F.R. § 54.301(b) & (f).

² 47 C.F.R. § 54.301.

³ 47 C.F.R. § 54.313; 47 C.F.R. § 54.314. The certification requirements for non-rural carriers are found in section 54.313 of the Commission's rules and the certification requirements for rural carriers are found in section 54.314 of the Commission's rules. See *id.* In instances where carriers are not subject to state jurisdiction, an ETC may self-certify to the Commission and USAC. 47 C.F.R. § 54.313(b); 47 C.F.R. § 54.314(b).

with USAC by October 1 of each year to receive LSS for the following calendar year.⁴

3. *Smithville's Petition for Waiver.* On February 26, 2003, Smithville filed a request for waiver of the October 1, 2003 annual LSS filing deadline in section 54.301(b) of the Commission's rules so that it can receive support for the 2004 calendar year.⁵ In particular, Smithville contends it missed the LSS filing deadline because of the death of its president on September 8, 2003 and subsequent management changes.⁶ These events, Smithville claims, "gave rise to substantial turmoil which lead to an oversight and inadvertent failure to submit the projected data to USAC on October 1, 2003."⁷ In addition, Smithville's regulatory accountant was away from his job for a substantial portion of November and December 2003 due to illness which further delayed the discovery of the missed LSS October 1 deadline.⁸ Smithville also states that granting its request will assist in the provision of affordable and quality telecommunications offerings to its customers in Indiana and therefore will serve the public interest.⁹

4. Generally, the Commission's rules may be waived for good cause shown.¹⁰ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹¹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹² Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.

III. DISCUSSION

5. Consistent with past precedent, we find that good cause exists to waive section 54.301(b) of the Commission's rules so that Smithville can receive LSS for the 2004 calendar year.¹³ Smithville has

⁴ 47 C.F.R. § 54.301(d). See also *Local Switching Support, Data Collection Form, Cost Company*, available at <http://www.universalservice.org/hc/components/lss.asp>; *Local Switching Support, Data Collection Form, Average Schedule Company*, available at <http://www.universalservice.org/hc/components/lss.asp>.

⁵ See Smithville Petition at 1, 6. On September 18, 2003, consistent with 54.314 of the Commission's rules, the Indiana Utility Regulatory Commission filed a certification with the Commission and USAC stating that Smithville would use high-cost support "only for the provision, maintenance and upgrading of facilities and services for which the support is intended, pursuant to section 254(e)" of the Act. Letter from Nancy E. Manley, Secretary, Indiana Utility Regulatory Commission, to Irene Flannery, Vice President, High Cost and Low Income Division, Universal Service Administrative Company, and Magalie Roman Salas, Secretary, Federal Communications Commission, filed Sept 18, 2003. See also Smithville Petition at n.6.

⁶ Smithville Petition at 5.

⁷ *Id.* at 5.

⁸ *Id.* at 4.

⁹ *Id.* at 6-7.

¹⁰ 47 C.F.R. § 1.3

¹¹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹² *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert denied*, 409 U.S. 1027 (1972).

¹³ The Wireline Competition Bureau (Bureau) has previously granted waivers in instances where petitioners demonstrated that special circumstances prevented them from meeting certain filing deadlines. For example, when an ETC designation occurred after a line-count filing deadline, the Bureau has granted waiver of that deadline. See *Federal-State Joint Board on Universal Service, RFB Cellular, Inc., Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, 17 FCC Rcd 24387 (Wireline Comp. Bur. 2002) (determining that "it would be inconsistent with the Commission's goal of competitive neutrality and section 254(e) to delay" the receipt of high-cost support because a carrier received its ETC designation after certain line-count filing deadlines). See also *Federal-State Joint Board on Universal Service, Guam Cellular and*

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demonstrated that special circumstances warrant a deviation from the October 1 filing deadline. Because the president of Smithville died less than one month before the filing deadline, Smithville was unable to file the necessary data to receive LSS support for the 2004 calendar year.¹⁴ Specifically, following this event, a number of projects stalled, including Smithville's LSS data filing, while a new management team adjusted to the disruption in Smithville's daily business operations.¹⁵ In light of these highly unique circumstances, we conclude that it would be onerous to deny Smithville receipt of LSS for an entire year. We also find, in this instance, these special circumstances outweigh any processing difficulties that USAC may face as a result of the late-filed certifications.¹⁶ We therefore find that Smithville has demonstrated special circumstances that justify a waiver of section 54.301(b).

6. We also conclude that waiver of section 54.301(b) would be consistent with the public interest. Quality service available at just, reasonable and affordable rates is a fundamental principal of the Commission's universal service policies.¹⁷ Denying LSS support for the entire 2004 calendar year to Smithville due to the circumstances presented here would undermine this goal. In particular, because the loss of LSS for an entire calendar year may affect the rates that Smithville charges to consumers, we find waiver of this rule is in the public interest.¹⁸

7. In conclusion, because of the unexpected death of Smithville's president and the subsequent impact on its LSS October 1 data filing, we find good cause exists to warrant a waiver of section 54.301(b) of the Commission's rules. This waiver will allow Smithville to receive LSS for the 2004 calendar year.¹⁹

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Paging, Inc., Petition for Waiver of Section 54.314 of the Commission's Rules and Regulations, Order, CC Docket No. 96-45, 18 FCC Rcd 7138 (Wireline Comp. Bur. 2002) (granting a waiver of the October 1 certification filing deadline because a carrier received its ETC designation after that deadline). Compare *Federal-State Joint Board on Universal Service, FiberNet, LLC, Petition for Waiver of Section 54.307(c) of the Commission's Rules and Regulations*, Order, CC Docket No. 96-45, DA 04-1287, para. 5 (Wireline Comp. Bur. rel. May 6, 2004) (finding the burdens associated with compiling and filing line-count data for the first time do not establish special circumstances that warrant a deviation from Commission's line-count filing deadline).

¹⁴ Smithville filed the necessary LSS data with USAC on February 10, 2004, the day it discovered that its LSS data had not been filed for the 2004 calendar year. See Smithville Petition at 4.

¹⁵ See Smithville Petition at 7.

¹⁶ To facilitate timely payments and to minimize the administrative burden associated with those payments, we direct USAC to distribute Smithville's retroactive support payments on a phased-in basis. Specifically, we instruct USAC to pair retroactive support payments with regularly monthly support payments as follows, until all retroactive support has been paid: Smithville's May 2004 LSS payment (disbursed June 2004) shall include its January 2004 LSS payment; Smithville's June 2004 LSS payment (disbursed in July 2004) shall include its February 2004 LSS payment; Smithville's July 2004 LSS payment (disbursed in August 2004) shall include its March 2004 LSS payment; Smithville's August 2004 LSS payment (disbursed in September 2004) shall include its April 2004 LSS payment.

¹⁷ See *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8839, para. 112 (1997) (*First Report and Order*) ("We recognize affordable rates are essential to inducing consumers to subscribe to telephone service, and also that increasing the number of people connected to the network increases the value of the telecommunications network"); 47 U.S.C. § 254(b).

¹⁸ See Smithville Petition at 6-7.

¹⁹ Granting Smithville's Petition will not affect the amount of support distributed to other ETCs. 47 U.S.C. § 254(e); 47 C.F.R. §§ 54.101, 54.201.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of section 54.301(b) of the Commission's rules, filed by Smithville Telephone Company, Inc., on February 26, 2004, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION



Eric N. Elnhorn

Chief, Telecommunications Access Policy Division
Wireline Competition Bureau